



## Bishopston Community Council

# DISCIPLINARY POLICY

**May 2024**

NB: This is a non-contractual procedure which will be reviewed from time to time.

Approving committee	Full Council
Date of committee meeting	28 May 2024
Policy version reference	<b>V1.0</b>

# Bishopston Community Council

## DISCIPLINARY POLICY

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## Introduction

This policy is based on and complies with the 2015 ACAS Code of Practice (<http://www.acas.org.uk/index.aspx?articleid=2174>). It also takes account of the ACAS guide on discipline and grievances at work. <https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html>

The policy is designed to help community council employees improve unsatisfactory conduct or behaviour in their job. Wherever possible, the community council will try to resolve its concerns about an employees' behaviour informally, without starting the formal procedure set out below.

The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.

This policy is adopted on a non-contractual basis and therefore does not make up part of employees' contractual terms and conditions. It may be amended at any time.

This policy confirms:

- informal coaching and supervision will be considered, where appropriate, to improve conduct, behaviour and/or attendance
- the community council will ensure an investigation of the facts of each case is carried out
- the community council recognises that misconduct and unsatisfactory work performance are different issues and therefore having separate policies for dealing with them. For more information see 'ACAS Conduct & Capability Procedures when Managing Performance' at <https://www.acas.org.uk/capability-procedures>
- the employee will be informed in writing about the nature of the complaint against them and given the opportunity to state their case
- the employee will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing
- the employee may be accompanied or represented by a companion – someone they work with, a workplace trade union representative who's certified by their union to act as a companion or an official employed by a trade union - at any disciplinary or appeal meeting. The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining their case
- the employee will be given reasonable notice of any meetings in this procedure. The employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions
- if the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date unless it is unreasonable not to propose a later date
- any changes to specified time limits in this procedure must be agreed by the employee and the community council
- information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the community council is confidential to the employee. The employee's disciplinary records will be held by the community council in accordance with data protection requirements

- audio or video recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition
- the employee has the right to appeal against any disciplinary decision. The appeal decision is final
- if an employee who is already subject to the community council's disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure
- disciplinary action taken can include a written warning, final written warning or dismissal
- this procedure may be implemented at any stage if the employee's alleged misconduct warrants
- except for gross misconduct when an employee may be dismissed without notice, an employee will not be dismissed on the first occasion that it is decided there has been misconduct
- if an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Alternative options to suspension will be considered, but the employee may be suspended if it is considered a reasonable way of dealing with the situation. Suspension is not a disciplinary sanction. The community council will write to the employee to confirm any period of suspension and the reasons for it,
- mediation may be considered at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the consent of affected parties.
- Where poor performance is believed to be the result of deliberate negligence, or where serious errors have been made to the detriment of the community council, the community council may decide to use this disciplinary procedure.

### Examples of misconduct

Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct: The list is not exhaustive.

- unauthorised absence
- poor timekeeping
- misuse of the community council's resources and facilities including telephone, email and internet
- inappropriate behaviour
- refusal to follow reasonable instruction
- breach of health and safety rules

### Examples of gross misconduct

Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list contains some examples of gross misconduct. The list is not exhaustive:

- unauthorised use of the Council's assets and equipment
- insubordination eg refusal to carry out duties or obey reasonable instructions, except where employee safety may reasonably be in jeopardy
- sexual harassment, harassment, bullying or violent, dangerous or intimidatory conduct

- serious breach of rules, policies or procedures, especially those designed to ensure safe operation
- divulging or misusing confidential information
- theft or fraud
- possession or consumption of alcohol or drugs, or intoxication by reason of alcohol or drugs, which could affect work performance in any way or have an impact on other employees
- unauthorised or inappropriate use of e-mail, Internet and/or computer systems
- falsification of any community council records including reports, accounts, expenses claims or self-certification forms
- bringing unauthorised person(s) onto community council premises.

This list of examples is not exhaustive or exclusive, and offences of a similar nature will be dealt with under this procedure. Gross misconduct will result in the initiation or escalation of the community council disciplinary procedure, and may result in immediate dismissal without notice or pay in lieu of notice.

## Suspension

The employee may be suspended while further investigations are carried out if allegations of gross misconduct or serious misconduct are made and/or it is reasonably believed it would protect any of the following:

- the investigation – for example if there are concerns about potential damaging evidence or influencing witnesses
- the organisation – for example if there's a genuine risk to your councillors, the public, property or other interests
- other employees
- the person under investigation

Suspension will be on full pay. Suspension does not imply any determination of guilt or innocence, as it is merely a measure to enable further investigation. Alternative options to suspension will be considered, and an employee will only be suspended if it is considered a reasonable way of dealing with the situation.

While on suspension, the employee is required to be available during normal hours of work if the community council needs to make contact. The employee must not contact or attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or councillor. Should they do so, this may be considered Gross Misconduct.

The employee must not attend work. The council will make arrangements for the employee to access any information or documents required to respond to any allegations.

## The Procedure

### Preliminary enquiries.

Preliminary enquiries may be made to establish the basic facts of what has happened in order to understand whether there may be a case to answer under the disciplinary procedure.

If the employee's manager believes there may be a disciplinary case to answer, the community council may initiate a more detailed investigation undertaken to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct.

### **Informal Procedures.**

Where minor concerns about conduct become apparent, it is the manager's responsibility to raise this with the employee and clarify the improvements required. A file note will be made and kept by the manager. The informal discussions are not part of the formal disciplinary procedure. If the conduct fails to improve, or if further matters of conduct become apparent, the manager may decide to formalise the discussions and invite the employee to a first stage disciplinary hearing.

### **Disciplinary investigation**

A formal disciplinary investigation may sometimes be required to establish the facts and whether there is a disciplinary case to answer.

If a formal disciplinary investigation is required, the community council's HR committee will appoint an Investigator who will be responsible for undertaking a fact-finding exercise to collect all relevant information. The Investigator will be independent and will normally be a community councillor.

If the HR committee considers it appropriate (eg there are no councillors who are independent because they all have direct involvement in the allegations about the employee, or councillors are not available to conduct the investigation in a timely manner), it will appoint someone from outside the community council.

The Investigator will be appointed as soon as possible after the allegations have been made. The HR committee will inform the Investigator of the terms of reference of the investigation. The terms of reference should specify:

- the allegations or events that the investigation is required to examine
- whether a recommendation is required
- how the findings should be presented. For example, an investigator will often be required to present the findings in the form of a written report
- who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.

The Investigator will be asked to submit their findings within 20 working days of appointment where possible. In cases of allegations of minor misconduct, the appointment of an investigator may not be necessary and the community council may decide to commence disciplinary proceedings at the next stage - the disciplinary meeting.

The HR committee will notify the employee in writing of the alleged misconduct and details of the person undertaking the investigation. The employee may be asked to meet an investigator as part of the disciplinary investigation. The employee will be given sufficient notice of the meeting with the Investigator so that they have reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of the disciplinary procedure. The employee will also be informed that when they meet with the Investigator, they will have the opportunity to comment on the allegations of misconduct.

If there are other persons (e.g. employees, councillors, members of the public or the community council's contractors) who can provide relevant information, the Investigator should try to obtain it from them in advance of the meeting with the employee.

The Investigator has no authority to take disciplinary action. Their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the HR committee whether or not disciplinary action should be considered under the policy.

The Investigator's report will contain their recommendations and the findings on which they were based. They will recommend either:

- the employee has no case to answer and there should be no further action under the disciplinary procedure
- the matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally or
- the employee has a case to answer and a formal hearing should be convened under the disciplinary procedure.

The Investigator will submit the report to the HR committee which will decide whether further action will be taken.

If the HR committee decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

## The disciplinary meeting

If the HR committee decides that there is a case to answer, it will appoint an HR sub-committee of three councillors, to formally hear the allegations. The HR sub-committee will appoint a Chair from one of its members. The Investigator shall not sit on the sub-committee.

No councillor with direct involvement in the matter shall be appointed to the sub-committee. The employee will be invited, in writing, to attend a disciplinary meeting. The sub-committee's letter will confirm the following:

- the names of its Chair and other two members
- details of the alleged misconduct, the possible consequences and the employee's statutory right to be accompanied at the meeting
- a copy of the information provided to the sub-committee which may include the investigation report, supporting evidence and a copy of the disciplinary procedure
- the time and place for the meeting. The employee will be given reasonable notice of the hearing so that they have sufficient time to prepare for it
- that witnesses may attend on the employee's and the community council's behalf and that both parties should inform each other of their witnesses' names at least two working days before the meeting
- that the employee may be accompanied by a companion - someone they work with, a workplace trade union representative who's certified by their union to act as a companion or an official employed by a trade union

The purpose of the disciplinary meeting hearing is for the allegations to be put to the employee and then for the employee to give their perspective. It will be conducted as follows:

- the Chair will introduce the members of the sub-committee to the employee and explain the arrangements for the hearing
- the Chair will set out the allegations and invite the Investigator to present the findings of the investigation report (if there has been a previous investigation)
- the Chair will invite the employee to present their account
- the employee (or the companion) will set out their case and present evidence (including any witnesses and/or witness statements)
- any member of the sub-committee and the employee (or the companion) may question the Investigator and any witnesses
- the employee (or companion) will have the opportunity to sum up

The Chair will provide the employee with the sub-committee's decision with reasons, in writing, within five working days of the meeting. The Chair will also notify the employee of the right to appeal the decision.

The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be further investigated by the sub-committee.

## Disciplinary action

If the sub-committee decides that there should be disciplinary action, it may be any of the following:

### First written warning

If the employee's conduct has fallen beneath acceptable standards, a first written warning will be issued. A first written warning will set out:

- the reason for the written warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action
- the employee's right of appeal
- that a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

### Final written warning

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, the employee will be given a final written warning. A final written warning will set out:

- the reason for the final written warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal
- the employee's right of appeal
- that a note confirming the final written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).



## Dismissal

The employee may be dismissed:

- for gross misconduct
- if there is no improvement within the specified time period, in the conduct which has been the subject of a final written warning
- if another instance of misconduct has occurred and a final written warning has already been issued and remains in force.

The decision to dismiss. If an employee is dismissed will be carefully considered and the employee will receive a written statement of the reasons for their dismissal, the date on which the employment will end and details of their right of appeal.

If the sub-committee decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.

Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

## The appeal

An employee who is the subject of disciplinary action will be notified of the right of appeal and who to direct any appeal to. Their written notice of appeal must be received within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

The grounds for appeal include:

- a failure by the Council to follow its disciplinary policy
- the sub-committee's disciplinary decision was not supported by the evidence
- the disciplinary action was too severe in the circumstances of the case
- new evidence has come to light since the disciplinary meeting.

Where possible, the appeal will be heard by a panel of three members of the HR committee who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the HR committee who have not previously been involved. If so, the appeal panel will be a committee of three members of the community council who may or may not include members of the HR committee. The appeal panel will appoint a Chair from one of its members.

The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that they may be accompanied by a companion - someone they work with, a workplace trade union representative who's certified by their union to act as a companion or an official employed by a trade union.

At the appeal meeting, the Chair will:

- introduce the panel members to the employee
- explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the disciplinary decision
- explain the action that the appeal panel may take.

The employee (or companion) will be asked to explain the grounds for appeal.

The Chair will inform the employee that they will receive the decision and the panel's reasons, in writing, usually within five working days of the appeal hearing.

The appeal panel may decide to uphold the disciplinary decision of the HR committee, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.

If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved.

The appeal panel's decision is final.